

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: W.R. GRACE & CO., et al., Debtors.	§ § § § § §	Chapter 11 Jointly Administered Case No. 01-01139 (JKF)
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**FEE AUDITOR'S FINAL REPORT REGARDING
FEE APPLICATION OF W. D. HILTON, JR.,
FOR THE THIRTY-THIRD INTERIM PERIOD**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Fee Application of W. D. Hilton, Jr., for the Thirty-Third Interim Period (the "Application").

BACKGROUND

1. W. D. Hilton, Jr. ("W. D. Hilton"), was retained as consultant to the Official Committee of Asbestos Property Damage Claimants. In the Application, W. D. Hilton seeks approval of fees totaling \$16,712.50¹ and no expenses for his services from August 12, 2005 through January 19, 2009 (the "Application Period").
2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330,

¹The monthly fee application upon which we based our initial report contained a request for \$17,237.50 in fees. However, the quarterly Application subsequently filed by W. D. Hilton on November 25, 2009, contained a request for \$16,712.50 in fees. *See* Paragraph 4, *infra*.

Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2009, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, Issued January 30, 1996 (the “U.S. Trustee Guidelines”), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We served an initial report on W.D. Hilton based on our review, and received a response from W.D. Hilton, portions of which response are quoted herein.

DISCUSSION

General Issues

3. In our initial report, we noted that pursuant to the terms of W. D. Hilton’s retention order, counsel for the Official Committee of Asbestos Property Damage Claimants is to certify that his services are not duplicative of those of any other consultant:

The court will NOT approve compensation to two consulting firms for the same services. Counsel to the Property Damage Committee shall certify to the court as to each monthly application for fees that he has personally reviewed the applications and either (1) identify each entry of duplicative services or (2) state that there are no duplicative services.²

To our knowledge, this order, though entered early in the case, is still in effect. Thus, we asked counsel for W. D. Hilton to provide the required certification, or to explain why it is no longer necessary. In response, W. D Hilton filed his quarterly Application, which Application contains the

²Order of Court Pursuant to Sections 1103(a) and 328(a) of the Bankruptcy Code and Fed. R. Bankr. P. 2014 and 2016 Authorizing the Retention and Employment of W. D. Hilton, Jr., as a Consultant to the Official Committee of Asbestos Property Damage Claimants, Nunc Pro Tunc to May 2, 2001 (Docket No. 1736), filed on February 20, 2002.

following certification signed by Jay M. Sakalo of Bilzin Sumberg Baena Price & Axelrod LLP,
Counsel to the Official Committee of Asbestos Property Damage Claimants:

CERTIFICATION OF COUNSEL

In accordance with the W. D. Hilton Retention Order, undersigned counsel, Jay M. Sakalo, hereby certifies that (a) he has personally reviewed the Applicant's August 12, 2005 through January 19, 2009 fee application for the thirty-fourth interim period and this Application, and (b) the services by the Applicant are not duplicative of services performed by Hamilton, Rabinovitz & Alschuler, Inc.

Dated: November 25, 2009

We accept W. D. Hilton's response and have no objection to the fees on that basis.

Specific Time and Expense Entries

4. In our initial report, we noted the following time entries which appeared to contain non-working travel time:

8/17/2005	8.00	Travel from Greenville, Texas to Washington, DC. Review documents provided by Bilzin firm	\$2,800.00
8/19/2005	10.00	Additional meetings with Committee, counsel and experts. Return travel from Washington, DC to Greenville, TX.	\$3,500.00
	18.00		\$6,300.00

Pursuant to Local Rule 2016-2(d)(viii): "Travel time during which no work is performed shall be separately described and may be billed at no more than 50% of regular hourly rates." Thus, we asked W.D. Hilton to provide the amount of time devoted to non-working travel, and indicate whether the required 50% discount had been applied to this time. In response, Mr. Hilton filed his quarterly Application wherein he designated as non-working travel time one hour of the 8/17/2005 time entry and two hours of the 8/19/2005 time entry, resulting in a reduction in his total fee request of

\$525.00.³ We appreciate Mr. Hilton's willingness to reduce his fees by \$525.00. However, we note that the travel times listed, 8 hours and 10 hours, includes much more time than just the time on the airplane. We note that it is approximately 70 miles from Greenville to the closest airport, Dallas/Fort Worth, and thus it does not appear possible to us to take this trip without spending at least 2 hours of non-working travel time. Thus it appears to us that a more realistic estimate of the non-working travel time entailed by the August 17 trip from Greenville, Texas, to Washington, DC, would have been at least two hours, rather than one hour. Thus, we recommend an additional reduction of \$175.00 in fees.

CONCLUSION

5. Thus, we recommend approval of \$16,537.50 in fees (\$16,712.50 minus \$175.00) for W. D. Hilton's services for the Application Period.

Respectfully submitted,

WARREN H. SMITH & ASSOCIATES, P.C.

By: 

Warren H. Smith
Texas State Bar No. 18757050

325 N. St. Paul Street, Suite 1250
Dallas, Texas 75201
214-698-3868
214-722-0081 (fax)
whsmith@whsmithlaw.com

FEE AUDITOR

³The total fee request of \$16,712.50 contained in Mr. Hilton's quarterly Application reflects the \$525.00 reduction.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served by First Class United States mail to the attached service list on this 7th day of December, 2009.



Warren H. Smith

SERVICE LIST

Applicant's Counsel

Jay M. Sakalo
Bilzin Sumberg Baena Price & Axelrod LLP
2500 Wachovia Financial Center
200 South Biscayne Boulevard
Miami, FL 33131-2385

Theodore J. Tacconelli
Lisa Coggins
Ferry, Joseph & Pearce, P.A.
824 Market Street, Suite 1000
P. O. Box 1351
Wilmington, DE 19899

The Debtors

David B. Siegel, Esq.
Sr. V.P. and Gen. Counsel
W.R. Grace & Co.
7500 Grace Drive
Columbia, MD 21044

Counsel for the Debtors

James H.M. Sprayregen, Esq.
Deanna Boll
David M. Bernick, P.C.
Kirkland & Ellis
200 East Randolph Drive
Chicago, IL 60601

Laura Davis Jones, Esq.
James R. O'Neill
Pachulski, Stang, Ziehl & Jones LLP
919 North Market Street, 17th Floor
P.O. Box 8705
Wilmington, DE 19899-8705

**Counsel for the Official Committee of
Unsecured Creditors**

Lewis Kruger, Esq
Stroock & Stroock & Lavan
180 Maiden Lane
New York, NY 10038-4982

Michael R. Lastowski, Esq.
Duane Morris LLP
1100 N. Market Street, Suite 1200
Wilmington, De 19801-1246

**Counsel to the Official Committee of Personal
Injury Claimants**

Elihu Inselbuch, Esq.
Caplin & Drysdale
375 Park Avenue, 35th Floor
New York, NY 10152-3500

Marla R. Eskin
Campbell & Levine, LLC
Suite 300
800 N. King Street
Wilmington, DE 19801

Official Committee of Equity Holders

Gary M. Becker
Kramer Levin Naftalis & Frankel
1177 Avenue of the Americas
New York, NY 10036

Teresa K. D. Currier
Saul Ewing LLP
222 Delaware Avenue
P.O. Box 1266
Wilmington, DE 19899

United States Trustee

David Klauder
Office of the United States Trustee
844 King Street, Suite 2311
Wilmington, DE 19801